

JS 44 CAND (Rev. 12/11)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Jeffrey Dwight Hempel

## DEFENDANTS

Discover Financial Services

MEJ

(b) County of Residence of First Listed Plaintiff Napa  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

E-filing

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ADR

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott J. Sagaria (SBN 217981), Elliot W. Gale (SBN 263326)  
Sagaria Law, P.C., 333 West San Carlos Street, Suite 1750  
San Jose, CA 95110; ph.: (408) 279-2288

Attorneys (If Known)

Jeffrey A. Topor (SBN 195545), Arvin C. Lugay (SBN 242599)  
Simmonds & Narita LLP, 44 Montgomery Street, Suite 3010  
San Francisco, CA 94104; ph.: (415) 283-1000

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREIGN/REPRESENTATIVE	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Fair Credit Reporting Act, 15 U.S.C. 1681s-2, et seq.

Brief description of cause:

Plaintiff alleges violation of Fair Credit Reporting Act, 15 U.S.C. 1681s-2, et seq.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

## IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE 02/29/2012

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity.

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

**Demand.** In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

**Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. **Divisional Assignment.** In accordance with Civil L.R. 3-2(c) - (f), select the appropriate venue based upon the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



1 JEFFREY A. TOPOR (SBN 195545)  
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Telephone: (415) 283-1000  
5 Facsimile: (415) 352-2625

6 Attorneys for defendant  
Discover Financial Services

E-filing

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 JEFFREY DWIGHT HEMPEL,

12 Plaintiff,

13 vs.

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16 DISCOVER FINANCIAL  
17 SERVICES, an FDIC insured  
18 corporation and DOES 1 through 100  
19 inclusive,

20 Defendant.  
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FILED  
2012 MAR -1 P 12:42  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
MEJ  
CV 12 1044  
CASE NO.:

NOTICE OF REMOVAL

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Discover Financial Services  
3 (“Defendant”), a limited liability company with a principal place of business in  
4 Riverwoods, Illinois, hereby removes to this Court the state court action described  
5 below.

6 1. On November 23, 2011, a complaint was filed against Defendant by  
7 plaintiff Jeffrey Dwight Hempel (“Plaintiff”), in an action pending in the Superior  
8 Court of the State of California in and for the County of Napa, entitled *Jeffrey*  
9 *Dwight Hempel v. Discover Financial Services*, Case No. 26-57681. A copy of the  
10 state court complaint (“Complaint”) is attached hereto as **Exhibit A**. A copy of the  
11 state court answer is attached hereto as **Exhibit B**.

12 2. This removal petition is timely under 28 U.S.C. § 1446(b) because  
13 Defendant’s counsel was first served with a copy of the Complaint on February 1,  
14 2012.

### 15 JURISDICTION

16 3. This action is a civil action of which this Court has original jurisdiction  
17 under 28 U.S.C. § 1331 and that may be removed to this Court by Defendant  
18 pursuant to the provisions of 28 U.S.C. § 1441(b), because the Complaint asserts  
19 federal claims against Defendant arising under the Fair Credit Reporting Act, 15  
20 U.S.C. §§ 1681s-2, *et seq.* See Exhibit A, at ¶¶ 1, 20, 29-37.

21 4. The Complaint was filed in the Superior Court of the State of  
22 California, County of Napa. Venue in the San Francisco or Oakland Division of  
23 this District Court is proper. See 28 U.S.C. § 1441(a) (providing for removal “to  
24 the district court of the United States for the district and division embracing the  
25 place” where the state court action is pending); Local Rule 3-2(d) (stating “all civil  
26 actions which arise in the counties of . . . Napa . . . shall be assigned to the San  
27 Francisco Division or the Oakland Division”).

28 5. Defendant is represented by the undersigned.

1 DATED: February 29, 2012

SIMMONDS & NARITA LLP  
JEFFREY A. TOPOR  
ARVIN C. LUGAY

2  
3  
4 By:



5 Arvin C. Lugay  
6 Attorneys for defendant  
7 Discover Financial Services  
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# Exhibit A

**FILED**

NOV 23 2011

Clerk of the Napa Superior Court

By: [Signature]  
Fidelity

CASE MANAGEMENT CONFERENCE

DATE: 5-1-11

TIME: 8:30am

PLACE: Courtroom B

325 Brown Street, Napa CA 94559

1 SCOTT J. SAGARIA (BAR # 217981)  
2 ELLIOT W. GALE (#263326)  
3 SAGARIA LAW, P.C.  
4 333 West San Carlos Street, Suite 1750  
San Jose, CA 95110  
408-279-2288 ph  
408-279-2299 fax

5 Attorney for Debtor/Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF NAPA

10 In Re:

CASE NO.:

**DELAY REDUCTION CASE**  
**28 - 57681-4**

COMPLAINT FOR DAMAGES:  
UNLIMITED JURISDICTION

14 Jeffrey Dwight Hempel,

15 Plaintiff.

17 v.

18 Discover Financial Services, an FDIC  
19 insured corporation and DOES 1 through  
20 100 inclusive,

21 Defendants.

1. Violation of Fair Credit Reporting Act;
2. Violation of California Song-Beverly Credit Card Act of 1971;
3. Violation of California Consumer Credit Reporting Agencies Act;
4. Violation of California Unfair Business Practices Act;
5. Libel;
6. Intentional Infliction of Emotional Distress;
7. Negligent Infliction of Emotional Distress;
8. Deceit;
9. Constructive Fraud

**BY FAX**

23 COMES NOW Plaintiff Jeffrey Dwight Hempel, an individual, based on information and belief,  
24 to allege as follows:  
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## INTRODUCTION

1. This action seeks redress for the unlawful and deceptive practices committed by the Defendants in connection with their fraudulent reporting of Plaintiff's discharged debt as still being owed and due. In particular, Defendants' conduct involves falsely representing that Plaintiff's discharged debt is still overdue and delinquent even though Plaintiff filed for bankruptcy two years ago and Defendant thereafter reported Plaintiff's account as "charged off." Plaintiff seeks monetary, declaratory and injunctive relief based on violations of Fair Credit Reporting Act, 15 U.S.C. 1681s-2 et. seq., California Song Beverly Act, California Civil Code § 1741, and California Consumer Credit Reporting Act, California Civil Code §1785.1 et seq. Additional causes of actions are stated for violations of the California Business and Professions Code 17200, libel, intentional and negligent infliction of emotional distress, deceit, and constructive fraud

## JURISDICTION AND VENUE

2. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, fully set forth herein.
3. Plaintiff, Jeffrey Dwight Hempel (hereinafter "Plaintiff"), is an individual and currently resides in the county of Napa, California.
4. This venue is proper pursuant to California Code of Civil Procedure § 395.5.
5. This Court has jurisdiction over Plaintiff's allegations pursuant to California Code of Civil Procedure § 410.10 et seq.
6. Plaintiff is a natural person and competent adult who at all relevant times in this Complaint resided in the State of California.
7. Defendant, Discover Financial Services, (hereinafter "Creditor") is an FDIC insured bank, with its principal place of business located at P.O. Box 30943, Salt Lake City, UT



84130-0943. Creditor collects debts on its own behalf and has agents collecting debts on its behalf throughout the county of Santa Clara.

8. Plaintiff is unaware of the true names and capacities of Defendants DOES 1 through 100, inclusive. Plaintiff is informed and believes and thereon alleges that each fictitious Defendant was in some way responsible for the matters and things complained of herein, and in some fashion, has legal responsibility therefore. When the exact nature and identity of each fictitious Defendant's responsibility for the matters and things herein alleged are ascertained by Plaintiff, Plaintiff will seek to amend this Complaint and all proceedings to set forth the same, pursuant to California Code of Civil Procedure 474.
9. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of Defendant is, and at all relevant times herein was, the agent, employee, and alter ego of each of the remaining Co-Defendants, and in committing the acts herein alleged, was acting in the scope of their authority as such agents, employees, or alter egos and with the permission and consent of the remaining Co-Defendants..

#### PRE-LITIGATION CLAIM FILINGS

10. On or about August 1, 2011, Plaintiff sent Transunion a written notice disputing Creditor's improper reporting to Transunion of Plaintiff's account as still delinquent even after Plaintiff filed for bankruptcy. Pursuant to Section 1681s-2(b) of the Fair Credit Reporting Act, Transunion provided notice to Creditor of Plaintiff's dispute. On August 22, 2011 Transunion sent Plaintiff a written notice of the results from Plaintiff's request for an investigation into the above referenced dispute. Plaintiff is informed that Creditor still reported Plaintiff's account being delinquent as of October 2011 even though Plaintiff was granted a bankruptcy discharge on March 27, 2009 and never made any post petition payments to Creditor. A true and correct copy of Plaintiff's notice from Transunion is attached hereto as Exhibit A and incorporated by this reference as though set forth in full.

**GENERAL ALLEGATIONS**

11. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, as though fully set forth herein.
12. On November 17, 2008 Plaintiff and Plaintiff's wife filed a voluntary joint Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of California.
13. The § 341(a) meeting of creditors was held in San Jose, California on or about January 7, 2009.
14. In the Schedules filed with the petition in this case and on the master mailing matrix filed with the Clerk of this Court, an unsecured debt was listed on Schedule F in favor of Creditor in the amount of \$8,500 (hereinafter "Debt").
15. On March 27, 2009 Plaintiff was granted a discharge of all dischargeable debts pursuant to 11 U.S.C. § 707. Plaintiff alleges that this Discharge included the debt to Creditor. A true and correct copy of the discharge order entered on March 27, 2009 is attached hereto as Exhibit B and incorporated by reference as though set forth in full.
16. On or about July 1, 2011 Plaintiff and Plaintiff's wife actively start searching for a desirable home to purchase. After settling on a home, Plaintiff attempted to receive pre-qualification for loan from Metlife in the amount of \$565,000. On or about July 27, 2011 Plaintiff's loan request was denied. Plaintiff is informed and believes that Plaintiff's request was denied because Plaintiff's credit report still indicated an overdue balance on behalf of Creditor and two delinquencies.
17. On or about August 3, 2011 Plaintiff sent a letter to Transunion requesting a formal, full, and complete investigation of account opened in September 1999 and ending in 5022. Plaintiff is informed that Transunion thereafter sent notice of Plaintiff's dispute to Creditor.
18. On August 22, 2011 Plaintiff received written notice from Transunion of the results from the investigation into Plaintiff's dispute on the above referenced account. The report dated August 22, 2011 now reflected Plaintiff's account with a past due balance of \$7,483. Moreover, Creditor reported that Plaintiff was delinquent on said debt in

1 September and October 2011, more than two years after Plaintiff was discharged in  
2 bankruptcy. Plaintiff also never made any post petition payments. A true and correct  
3 copy of Plaintiff's August 22, 2011 Transunion Credit is attached heretofore as Exhibit  
4 A.

- 5 19. To date, despite being noticed of the original bankruptcy and Plaintiff re-noticing  
6 Defendants by disputing the reporting, Defendants have failed to take any action  
7 whatsoever to correct Plaintiff's credit report.
- 8 20. The actions of Defendant as alleged herein are acts in violation of the Fair Credit  
9 Reporting Act, 15 U.S.C. § 1681s-2 et. seq.
- 10 21. The actions of Defendants as alleged herein are acts in violation of California Song-  
11 Beverly Credit Card Act of 1971, California Civil Code § 1747, et seq.
- 12 22. The actions of Defendants as alleged herein are acts in violation of the consumer credit  
13 reporting agencies act California Civil Code § 1785.25, et seq.
- 14 23. The actions of Defendant as alleged herein are acts in violation of the California  
15 Business and Professions Code § 17200.
- 16 24. The actions of Defendants as alleged herein are libelous acts in violation of California  
17 Civil Code 45.
- 18 25. The actions of Defendants as alleged herein constitute Intentional Infliction of  
19 emotional distress.
- 20 26. The actions of Defendants as alleged herein constitute negligent infliction of emotional  
21 distress.
- 22 27. The actions of Defendants as alleged herein constitute deceit in violation of California  
23 Civil Code §1710.
- 24 28. The actions of Defendants as alleged herein constitute constructive fraud in violation of  
25 California Civil Code §1573.
- 26  
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**FIRST CAUSE OF ACTION**  
**(Violation Of Fair Credit Reporting Act**  
**15 U.S.C. § 1681s-2, Et Seq.)**  
**(Against Defendant Creditor and Does 1-100)**

29. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, as though fully set forth herein.
30. Creditor, in the course of regular business, reports information to credit reporting agencies.
31. After being notice of Creditors inaccurate reporting, Plaintiff promptly disputed the inaccurate delinquent notations on Plaintiff's credit report with Transunion. Transunion sent notice of Plaintiff's dispute to Creditor pursuant to Section 1681s-2(B) of the Fair Credit Reporting Act. Creditor was thereafter under a duty to reasonably investigate Plaintiff's dispute. Creditor did not conduct a reasonable investigation as required under the Fair Credit Reporting Act. Creditor failed to discover that Plaintiff's discharge, granted in 2009, relieved Plaintiff from any further obligation to pay the discharged debt and Plaintiff was never delinquent in September and October 2011.
32. Creditor intentionally and knowingly failed to investigate and correct inaccurate and false information regarding delinquency in payment to credit reporting agencies, and other actions previously described in violation of 15 U.S.C § 1681s-2 et. seq.
33. Creditor failed to notify consumer reporting agencies that the information defendant provided such agencies, was inaccurate in a prompt manner, in violation of 15 U.S.C. § 1681s-2 et. seq.
34. Creditor's communications of false information, and repeated failures to investigate, and correct their inaccurate information and erroneous reporting were done knowingly, intentionally, and in reckless disregard for their duties and Plaintiff's rights.
35. As a direct and proximate result of willful, untrue and knowingly made communications by Creditor, Plaintiff has suffered damages, and incurred costs and expenses in an amount to be determined at trial.



1 36. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred  
2 pain and suffering, was impeded in seeking necessary products and services from  
3 vendors, additional credit from other credit agencies, suffered humiliation,  
4 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.

5 37. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

6  
7 **SECOND CAUSE OF ACTION**

8 (Violation of the California Song-Beverly Credit Card Act of 1971 California Civil  
9 Code § 1747, Et Seq.)

10 (Against Defendant Creditor and Does 1-100)

11 38. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
12 every paragraph above, as though fully set forth herein.

13 39. On dates uncertain, Creditor published, or caused to be published, credit reports which  
14 contained statements about Plaintiff that were untrue, and were known to be or should  
15 have been known to be untrue. These false statements claimed Plaintiff was delinquent  
16 in payments on a debt included in Plaintiff's bankruptcy.

17 40. Despite Creditor having actual knowledge of Plaintiff's bankruptcy filing, Creditor,  
18 and/or its agent, falsely, and without privilege to do so, reported this alleged debt as  
19 currently due, owing, and delinquent. More specifically, Creditor reported Plaintiff's  
20 account as still outstanding even after Plaintiff petitioned for bankruptcy. This  
21 characterization was completely inaccurate as Plaintiff's petition removed Plaintiff's  
22 obligation to continue further payments on Plaintiff's debt.

23 41. Creditor knowingly and willfully communicated to credit reporting agencies including,  
24 but not limited to Experian, Trans Union, Equifax, and others information regarding an  
25 untrue delinquency in payments on account by Plaintiff.

26 42. The communications made by Creditor to Experian, Trans Union, Equifax, and others,  
27 were untrue and Creditor knew or should have known that the communications were  
28 untrue and/or acted in reckless disregard for the truth of the statements.

1 43. As a direct and proximate result of the unreasonable and unsubstantiated false reports  
2 of Plaintiff's credit worthiness, and willful, untrue, and knowingly made  
3 communications by Creditor, Plaintiff has suffered actual damage, incurred costs, and  
4 expenses, in an amount to be proven at trial.

5 44. As a further direct and proximate result of acts by Creditor as stated herein, Plaintiff  
6 experienced unwarranted difficulty obtaining credit from other credit agencies, and  
7 suffered humiliation, embarrassment, anxiety, emotional distress and defamation of  
8 character.

9 45. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

10  
11 **THIRD CAUSE OF ACTION**

12 (Violation Of Consumer Credit Reporting Agencies Act  
13 California Civil Code § 1785.25, Et Seq.)  
14 (Against Defendants Creditor and Does 1-100)

15 46. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
16 every paragraph above, as though fully set forth herein.

17 47. Creditor, in the ordinary course of business, regularly and on a routine basis furnishes  
18 information to one or more consumer credit reporting agencies.

19 48. Creditor intentionally and knowingly reported inaccurate and false information  
20 regarding delinquency in payment to credit reporting agencies, and other actions  
21 previously described in violation of California Civil Code § 1785.25 et. seq.

22 49. Creditor should have discovered through investigation that the reported information of  
23 Plaintiff's account, and alleged delinquencies in payment were inaccurate.

24 50. Creditor failed to notify consumer reporting agencies that the information Defendant  
25 provided such agencies, was inaccurate before the end of 30 business days, in violation  
26 of California Civil Code § 1785.25 et. seq.

27 51. Creditor failed to correct inaccurate information provided to the agencies as described  
28 hereinabove in violation of California Civil Code § 1785.25 et. seq.

1 52. Creditor's communications of false information, and repeated failures to investigate,  
2 and correct their inaccurate information and erroneous reporting were done knowingly,  
3 intentionally, and in reckless disregard for their duties and Plaintiff's rights.

4 53. As a direct and proximate result of willful, untrue and knowingly made  
5 communications by Creditor, Plaintiff has suffered damages, and incurred costs and  
6 expenses in an amount to be determined at trial.

7 54. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred  
8 pain and suffering, was impeded in seeking necessary products and services from  
9 vendors, additional credit from other credit agencies, suffered humiliation,  
10 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.

11 55. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

12  
13 **FOURTH CAUSE OF ACTION**

14 (Unfair Business Practices Act  
15 California Business and Professions Code § 17200)  
16 (Against Defendant Creditor and Does 1-100)

17 58. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
18 every paragraph above, as though fully set forth herein.

19 59. Plaintiff brings this action in individual capacity and on behalf of the general public.

20 60. Creditor at all times relevant to this Complaint, was engaged in the business of  
21 collections and providing services on credit to qualified applicants.

22 61. Commencing on or about January 18, 2011 and continuing to the present, Creditor  
23 committed the acts of unfair practices as defined by Business and Professions Code §  
24 17200 and described in the above stated Causes of Action.

25 62. Creditor's acts and practices described above were and were likely to continue to  
26 mislead the general public and therefore constitute misleading and unfair practices  
27 within the meaning of Business and Professions Code § 17200.

28 63. These unfair and unlawful business practices of Creditor are likely to continue and  
therefore will continue to injure Plaintiff and mislead the public by inaccurate record

1 keeping, failure to correct inaccuracies and erroneous dissemination of inaccurate  
2 information, and present a continuing threat to the public.

3 64. Additionally, these acts and practices were and were likely to continue to mislead the  
4 general public in that they constitute violations of California Civil Code §§ 1747, et  
5 seq., 1785, et seq., and 1788, et seq.

6 65. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

7  
8 **FIFTH CAUSE OF ACTION**  
9 (California Civil Code § 45; Libel)  
10 (Against Defendants Creditor and Does 1-100)

11 66. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
12 every paragraph above, as though fully set forth herein.

13 67. It is alleged that without legal cause, or legal right to do so, Creditor allowed and  
14 continues to allow credit reporting agencies to report that Plaintiff currently owes  
15 money to Creditor and is delinquent in not paying this alleged debt.

16 68. These reports or publications by Creditor referred to Plaintiff as delinquent in financial  
17 responsibilities, and is understood by all who saw said reports that Plaintiff is not  
18 creditworthy.

19 69. As a result of the acts alleged above, Plaintiff and Plaintiff's wife have suffered damage  
20 to their good name and reputation, credit reporting, and rating.

21 70. The reports or publications by Creditor were libelous on their face in that they clearly  
22 exposed Plaintiff to ridicule and obloquy because they stated delinquency in payment,  
23 indicated incapability of paying debts, indicated a credit risk, and foreclosed personal  
24 transactions based on credit.

25 71. Creditor's publications were seen and read by numerous credit reporting agencies and  
26 credit granting organizations, and as a result, the false information was disseminated  
27 throughout the financial community to any service or institution with an inquiry.

28 72. The above-described publication was not privileged because it was published or caused  
to be published by Creditor with knowledge of its falsity and a reckless disregard for



1 the truth of the matter constituting malice toward Plaintiff. Because of Creditor's  
2 malice in publishing this false report, Plaintiff seeks punitive damages in an amount to  
3 be determined at trial.

4 73. On information and belief, Plaintiff alleges that this false and malicious publication was  
5 made in retaliation for Plaintiff filing a Chapter 7 petition.

6 74. As a direct and proximate result of these malicious, wrongful, and willful acts, Plaintiff  
7 suffered injury which resulted in headaches, nausea, embarrassment, and other physical  
8 damages.

9 75. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

10  
11 **SIXTH CAUSE OF ACTION**  
12 (Intentional Infliction of Emotional Distress)  
(Against Defendants Creditor and Does 1-100)

13 76. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
14 every paragraph above, as though fully set forth herein.

15 77. Creditor's conduct and personal insult in the above stated causes of action were so  
16 severe and outrageous, and intentional, that as a proximate result Plaintiff was impeded  
17 in seeking necessary products and services from vendors and additional credit from  
18 other credit agencies, suffered humiliation, embarrassment, anxiety, loss of sleep,  
19 emotional distress, pain and suffering, and defamation of character.

20 78. Such conduct violates Plaintiff's enjoyment of rights secured by the Constitution of the  
21 United States, and California Civil Code §§ 43 and 1708.

22 79. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

23  
24 **SEVENTH CAUSE OF ACTION**  
25 (Negligent Infliction of Emotional Distress)  
26 (Against Defendants Creditor and Does 1-100)

27 80. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
28 every paragraph above, as though fully set forth herein.

1 81. Creditor's negligent conduct and personal insult in the above referenced causes of  
2 action proximately caused Plaintiff impediment in seeking necessary products and  
3 services from vendors and additional credit from other credit agencies, humiliation,  
4 embarrassment, anxiety, loss of sleep, emotional distress, pain and suffering, and  
5 defamation of character.

6 82. As a further direct and proximate result of the negligent acts by Creditor and their  
7 refusal to rectify their errors as stated herein, Plaintiff has suffered damages and  
8 incurred costs and expenses in an amount to be determined at trial.

9 83. Such conduct violates Plaintiff's enjoyment of rights secured by the Constitution of the  
10 United States, California Civil Code §§ 43 and 1708.

11 84. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

12 **EIGHTH CAUSE OF ACTION**

13 (Violation of California Civil Code § 1710; Deceit)  
14 (Against Defendants Creditor and Does 1-100)

15 85. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
16 every paragraph above, as though fully set forth herein.

17 86. The actions taken by Creditor violate California Civil Code §1710 in that they are  
18 attempting to collect on a debt against the Plaintiff personally when they have no  
19 reasonable grounds for doing so.

20 87. Creditor's actions after actual knowledge of Plaintiff's bankruptcy filing and  
21 subsequent discharge, clearly demonstrates assertions of fact which are not true.

22 85. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

23 **NINTH CAUSE OF ACTION**

24 (Violation of California Civil Code § 1573; Constructive Fraud)  
25 (Against Defendants Creditor and Does 1-100)

26 88. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
27 every paragraph above, as though fully set forth herein  
28

89. The actions taken by Creditor violate California Civil Code § 1573, in that they were collecting on a debt personally against the Plaintiff when they had no reasonable grounds for doing so.

90. Creditor's subsequent collections on a discharged debt personally against the Plaintiff after actual knowledge of Plaintiff's bankruptcy filing clearly a breach of duty gaining an advantage against the Plaintiff and misleads the Credit Reporting Agencies to Plaintiff's prejudice.

86. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. For actual damages according to proof at trial;
- b. For punitive and exemplary damages;
- c. For determination by the court that Creditor's policies and practices are unlawful and in willful violation of 15 U.S.C. § 1681(n)-(o), et seq.; California Business and Professions Code § 17200, et seq.; and California Civil Code §§ 45, 52.1, 1573, 1710, 1747.40, 1785.25, et seq.;
- d. Enjoin Creditor from continuing its policies and practices pursuant to 15 U.S.C. § 1681s-2et seq.; California Business and Professions Code § 17200, et seq.; and California Civil Code §§ 45, 52.1, 1573, 1710, 1747.40, 1785.25, et seq.;
- e. Order Creditor to correct Plaintiff's credit reports and other credit bureau reports to accurately reflect Plaintiff's debt has been discharged;
- f. Award actual damages pursuant to 15 U.S.C. § 1681n; California Civil Code §§ 52.1, 1573, 1709, 1714, 1785.31, 1788.30(a), and 3281
- g. For preliminary and permanent injunctive relief to stop Defendants from engaging in the conduct described above;
- h. Award punitive damages in an amount to deter further unlawful conduct pursuant to 15 U.S.C. § 1681n; and California Civil Code § 1785.31
- i. Award treble damages against Creditor in an amount to deter further unlawful conduct pursuant to California Civil Code § 1747.70(d)

- j. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. § 1681n; and California Civil Code §§ 52.1(h), 1012.5, 1747, 1785.31, 1788.30(c);
- k. Award damages for pain and suffering against Creditor pursuant to California Civil Code § 1785.31;
- l. Award interest pursuant to California Civil Code § 3288;
- m. Restore Plaintiff and those similarly situated any money or property already acquired as a result of Creditor's unlawful conduct;
- n. For prejudgment interest at the maximum legal rate; and
- o. For such other and further relief as the court deems appropriate under the circumstances.

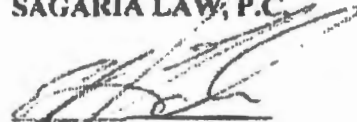
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of this matter by jury.

**SAGARIA LAW, P.C.**

Dated: November 22, 2011

By:



Elliot Gale, Esq.

Attorneys for Debtor/Plaintiff



# Exhibit B

02/02/2012 15:52 7072261751

NORCAL:ENTERPRISES

PAGE 05

**ENDORSED**

FEB 02 2012

Clerk of the Napa Superior Court

By: C. FRANKIE  
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7 Attorneys for defendant  
Discover Financial Services9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF NAPA

12 JEFFREY DWIGHT HEMPEL,

13 Plaintiff,

15 vs.

17 DISCOVER FINANCIAL  
SERVICES, an FDIC insured  
18 corporation and DOES 1 through 100  
inclusive,19 Defendant.  
20

CASE NO.: 26-57681

ANSWER TO UNVERIFIED  
COMPLAINT**BY FAX**

1 Defendant DISCOVER FINANCIAL SERVICES ("Defendant") hereby  
2 submits the following Answer to the unverified Complaint filed in this action by  
3 plaintiff JEFFREY DWIGHT HEMPEL ("Plaintiff"):

4  
5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure § 431.30, Defendant generally  
7 denies each and every allegation in the Complaint and each purported cause of action  
8 therein.

9  
10 **AFFIRMATIVE DEFENSES**

11 As and for separate affirmative defenses to the Complaint, Defendant alleges  
12 as follows:

13  
14 **FIRST AFFIRMATIVE DEFENSE**  
15 **(Failure to State a Claim)**

16 The allegations of the Complaint fail to state a claim against Defendant upon  
17 which relief can be granted.

18  
19 **SECOND AFFIRMATIVE DEFENSE**  
20 **(Arbitration)**

21 Plaintiff's claims are subject to arbitration pursuant to a binding arbitration  
22 agreement contained in the terms and conditions governing the credit card account  
23 that is the subject of this action, which agreement may be elected by either party  
24 prior to trial or judgment. Defendant reserves its right to compel arbitration of  
25 Plaintiff's claims.

26 //

27 //

28 //

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 The allegations in the Complaint and relief requested are, on information and  
4 belief, barred in whole or in part by the doctrine of unclean hands.

5  
6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(No Wilful Conduct)**

8 Defendant acted in good faith at all times in its dealings with Plaintiff, and if  
9 any conduct by Defendant is found to be unlawful, which Defendant expressly  
10 denies, such conduct was not willful and should not give rise to liability.

11  
12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Failure to Mitigate)**

14 Plaintiff, although under a legal obligation to do so, has failed to take  
15 reasonable steps to mitigate any alleged damages that he may have and is therefore  
16 barred from recovering damages, if any, from Defendant.

17  
18 **SIXTH AFFIRMATIVE DEFENSE**

19 **(Waiver)**

20 Plaintiff has waived his rights, if any, to recover the relief he seeks in the  
21 Complaint based upon his own conduct and admissions with respect to the financial  
22 obligation at issue.

23  
24 **SEVENTH AFFIRMATIVE DEFENSE**

25 **(Good Faith)**

26 Defendant has, at all material times with respect to Plaintiff, acted in good  
27 faith in an effort to comply fully with all relevant federal and state laws.



**EIGHTH AFFIRMATIVE DEFENSE****(Apportionment)**

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of all defendants and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of this Defendant should be reduced accordingly.

**NINTH AFFIRMATIVE DEFENSE****(Supervening Cause)**

The causes of action in the Complaint are barred, in whole or in part, to the extent that any injury or loss sustained was caused by intervening or supervening events over which Defendant had or has no control.

**TENTH AFFIRMATIVE DEFENSE****(Equitable Indemnity)**

To the extent that Plaintiff has suffered any damage as a result of any alleged act or omission of Defendant, which Defendant denies, Defendant is entitled to equitable indemnity according to comparative fault from other persons and/or entities causing or contributing to such damages, if any.

**ELEVENTH AFFIRMATIVE DEFENSE****(First Amendment)**

Defendant's conduct is protected under the First Amendment of the United States Constitution and the California Constitution. Plaintiff's proposed interpretation of the Fair Credit Reporting Act and the California Consumer Credit Reporting Agencies Act must be rejected as it would place an unreasonable restraint

1 upon Defendant's First Amendment rights, thereby raising serious constitutional  
2 issues.

3  
4 **TWELFTH AFFIRMATIVE DEFENSE**

5 **(Statute of Limitations/Laches)**

6 The purported claims set forth in the Complaint are barred in whole or in part  
7 by the applicable statutes of limitation and/or the equitable doctrine of laches.

8  
9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **(Standing)**

11 Plaintiff has not suffered any injury in fact as a result of Defendant's alleged  
12 conduct and therefore lacks standing to sue.

13  
14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 **(Preemption)**

16 Plaintiff's claims under state law are barred in whole or in part by the doctrine  
17 of preemption.

18  
19 WHEREFORE, Defendant requests judgment as follows:

20 1. That Plaintiff takes nothing by the Complaint, which should be dismissed  
21 with prejudice.

22 2. That Defendant recover from Plaintiff its costs according to proof.

23 3. That Defendant recover its attorneys' fees according to proof.

24 4. That the Court orders such other further reasonable relief as the Court may  
25 deem just and proper.

26 //

27 //

28 //

1 DATED: February 2, 2012

SIMMONDS & NARITA LLP  
JEFFREY A. TOPOR  
ARVIN C. LUGAY

2  
3  
4 By: \_\_\_\_\_

Jeffrey A. Topor  
Attorneys for defendant  
Discover Financial Services

**PROOF OF SERVICE**

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the collection and processing of correspondence by mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

**1) ANSWER TO UNVERIFIED COMPLAINT**

by causing such document to be placed in a sealed envelope for collection and delivery by the United States Postal Service to the addressee indicated below:

**VIA U.S. MAIL**

Scott J. Sagaria  
Elliot W. Gale  
Sagaria Law, P.C.  
333 West San Carlos Street, Suite 1750  
San Jose, CA 95110  
Counsel for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on this 2nd day of February, 2012.

  
Sally Koo